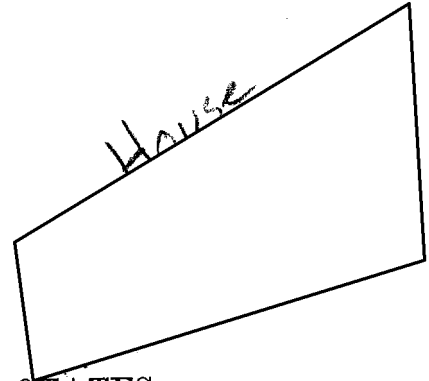


STAT

88TH CONGRESS
2D SESSION

S. 3008



IN THE SENATE OF THE UNITED STATES

JULY 20, 1964

Mr. McCLELLAN (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

For the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the*
2 *United States of America in Congress assembled, That title 17 of the*
3 *United States Code, entitled "Copyrights," is hereby amended in its*
4 *entirety to read as follows:*

5 **TITLE 17—COPYRIGHTS**

Sec.

1. Subject matter of copyright: in general.
2. Subject matter of copyright: compilations and derivative works.
3. Subject matter of copyright: national origin.
4. Subject matter of copyright: United States Government works.
5. Exclusive rights in copyrighted works.
6. Limitations on exclusive rights: fair use.
7. Limitations on exclusive rights: effect of transfer of particular copy or phonorecord.
8. Limitations on exclusive rights: exemption of certain performances and exhibitions.
9. Scope of exclusive rights in pictorial, graphic, and sculptural works.
10. Scope of exclusive rights in sound recordings.
11. Scope of exclusive rights in nondramatic musical works: compulsory license for making and distributing phonorecords.
12. Scope of exclusive rights in nondramatic musical works: performance by means of coin-operated machine.
13. Limitations on exclusive rights: public communication of broadcasts.
14. Ownership of copyright.
15. Ownership of copyright as distinct from ownership of material object.
16. Termination of transfers of copyright ownership.
17. Execution of transfers of copyright ownership.
18. Recordation of transfers and other documents.
19. Pre-emption with respect to other laws.
20. Duration of copyright: works created after January 1, 1967.

(1)

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1 **TITLE 17—COPYRIGHTS—Continued**

- Sec.
- 21. Duration of copyright: works created but not published or copyrighted before January 1, 1907.
 - 22. Duration of copyright: subsisting copyrights.
 - 23. Duration of copyright: terminal date.
 - 24. Notice of copyright: visually-perceptible copies.
 - 25. Notice of copyright: phonorecords of sound recordings.
 - 26. Notice of copyright: contributions to collective works.
 - 27. Notice of copyright: omission of notice.
 - 28. Notice of copyright: error in name or date.
 - 29. Deposit of copies or phonorecords for Library of Congress.
 - 30. Copyright registration in general.
 - 31. Application for registration.
 - 32. Registration of claim and issuance of certificate.
 - 33. Registration as prerequisite to infringement suit.
 - 34. Registration as prerequisite to certain remedies for infringement.
 - 35. Infringement of copyright.
 - 36. Remedies for infringement: injunctions.
 - 37. Remedies for infringement: impounding and disposition of infringing articles.
 - 38. Remedies for infringement: damages and profits.
 - 39. Remedies for infringement: costs and attorney's fees.
 - 40. Criminal offenses.
 - 41. Limitations on actions.
 - 42. Notification of filing and determination of actions.
 - 43. Manufacture and importation of certain copies.
 - 44. Infringing importation of copies or phonorecords.
 - 45. Importation prohibitions: enforcement and disposition of excluded articles.
 - 46. The Copyright Office: general responsibilities and organization.
 - 47. Copyright Office regulations.
 - 48. Effective date of actions in Copyright Office.
 - 49. Retention and disposition of articles deposited in Copyright Office.
 - 50. Copyright Office records: preparation, maintenance, public inspection, and searching.
 - 51. Copies of Copyright Office records.
 - 52. Copyright Office forms and publications.
 - 53. Copyright Office fees.
 - 54. Definitions.

2 § 1. Subject matter of copyright: in general.

3 Copyright protection subsists, in accordance with this title, in origi-
4 nal works of authorship fixed in any tangible medium of expression,
5 now known or later developed, from which they can be perceived, re-
6 produced, or otherwise communicated, either directly or with the aid
7 of a machine or device. Works of authorship include, but are not
8 limited to, the following categories:

- 9 (1) literary works;
- 10 (2) musical works, including any accompanying words;
- 11 (3) dramatic works, including any accompanying music;
- 12 (4) choreographic works and pantomimes;
- 13 (5) pictorial, graphic, and sculptural works;
- 14 (6) motion pictures;
- 15 (7) sound recordings.

1 **§ 2. Subject matter of copyright: compilations and derivative**
2 **works.**

3 (a) The subject matter of copyright as specified by section 1 in-
4 cludes compilations and derivative works, but protection for a work
5 employing pre-existing material in which copyright subsists is avail-
6 able only to the extent that such material has been used lawfully.

7 (b) The copyright in a compilation or derivative work extends
8 only to the material contributed by the author of such work, as dis-
9 tinguished from the pre-existing material employed in the work, and
10 shall not imply any exclusive right in the pre-existing material.
11 The copyright in such work shall be independent of, and shall not
12 affect or enlarge the scope, duration, ownership, or subsistence of any
13 copyright protection in the pre-existing material.

14 **§ 3. Subject matter of copyright: national origin.**

15 (a) UNPUBLISHED WORKS.—The works specified by sections 1 and
16 2, while unpublished, are subject to protection under this title without
17 regard to the nationality or domicile of the author.

18 (b) PUBLISHED WORKS.—The works specified by sections 1 and 2,
19 when published, are subject to protection under this title if:

20 (1) on the date of first publication, one or more of the authors
21 is a national or domiciliary of the United States, or is a national,
22 domiciliary, or sovereign authority of a foreign nation that is a
23 party to a copyright convention or treaty to which the United
24 States is also a party; or

25 (2) the work is first published in the United States or in a for-
26 eign nation that is a party to the Universal Copyright Conven-
27 tion of 1952; or

28 (3) the work is first published by the United Nations or any
29 of its specialized agencies, or by the Organization of American
30 States; or

31 (4) the work comes within the scope of a Presidential procla-
32 mation. Whenever he finds it to be in the national interest, the
33 President may in his discretion extend, by proclamation, protec-
34 tion under this title to works of which one or more of the authors
35 is, on the date of first publication, a national, domiciliary, or
36 sovereign authority of any designated foreign nation, or which
37 are first published in any designated foreign nation, and he may
38 revise, suspend, or revoke any proclamation or impose any con-
39 ditions or limitations on protection under a proclamation.

1 **§ 4. Subject matter of copyright: United States Government**
 2 **works.**

3 (a) Except as provided by subsections (b) and (c), copyright pro-
 4 tection under this title is not available for any published work of the
 5 United States Government, but the United States Government is not
 6 precluded from receiving and holding copyrights transferred to it by
 7 assignment, bequest, or otherwise.

8 (b) As an exception to the provisions of subsection (a), the Post-
 9 master General may secure copyright on behalf of the United States
 10 Government in the whole or any part of the publications authorized
 11 by section 2506 of title 39.

12 (c) In other exceptional cases, copyright may be secured in a
 13 published work of the United States Government where, because of
 14 the special nature of the work or the circumstances of its preparation,
 15 it is determined that copyright protection would result in more effec-
 16 tive dissemination of the work or for other reasons would be in the
 17 public interest. The head of the Government agency for which the
 18 work was prepared shall make the determination in each case in ac-
 19 cordance with regulations established by an administrative officer
 20 designated by the President, and shall publish a statement of the basis
 21 for its determination in each case in the manner specified by such
 22 regulations.

23 (d) Publication or other use by the United States Government of
 24 any material in which copyright is subsisting does not impair the
 25 copyright or authorize any further use or appropriation of the mate-
 26 rial without the consent of the copyright owner.

27 (e) A "work of the United States Government" is a work prepared
 28 by an officer or employee of the United States Government as part of
 29 his official duties.

30 **§ 5. Exclusive rights in copyrighted works.**

31 (a) **GENERAL SCOPE OF COPYRIGHT.**—Subject to sections 6 through 13,
 32 the owner of copyright under this title has the exclusive rights to do
 33 or to authorize any of the following:

34 (1) to reproduce the copyrighted work in copies or phono-
 35 records;

36 (2) to prepare derivative works based upon the copyrighted
 37 work;

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translations?*

1 (3) to distribute copies or phonorecords of the copyrighted
2 work to the public by sale or other transfer of ownership, or by
3 rental, lease, or lending;

4 (4) in the case of literary, musical, dramatic, and choreo-
5 graphic works, pantomimes, and motion pictures, to perform the
6 copyrighted work publicly;

7 (5) in the case of pictorial, graphic, or sculptural works, to
8 exhibit the copyrighted work publicly.

9 (b) DEFINITIONS OF CERTAIN EXCLUSIVE RIGHTS.—

10 (1) To "perform" a work means to recite, render, play, act, or
11 represent it, either directly or by means of any device or process,
12 or, in the case of a motion picture, to show its images or to make
13 the sounds accompanying it audible.

14 (2) To "exhibit" a work means to show a copy of it, either
15 directly or by means of motion picture films, slides, or any other
16 device or process.

17 (3) To perform or exhibit a work "publicly" means:

18 (A) to perform or exhibit it at a place open to the public
19 or at any place where a substantial number of persons out-
20 side of a normal circle of a family and its social acquaintances
21 is gathered;

22 (B) to broadcast a performance or exhibition of the work
23 to the public, or to transmit to the public a broadcast of any
24 performance or exhibition otherwise than as a common
25 carrier;

26 (C) to communicate a performance or exhibition of the
27 work to the public by means of any device or process.

28 **§ 6. Limitations on exclusive rights: fair use.**

29 Notwithstanding the provisions of section 5, the fair use of a copy-
30 righted work to the extent reasonably necessary or incidental to a
31 legitimate purpose such as criticism, comment, news reporting, teach-
32 ing, scholarship, or research is not an infringement of copyright. In
33 determining whether the use made of a work in any particular case
34 is a fair use, the factors to be considered shall include:

35 (1) the purpose and character of the use;

36 (2) the nature of the copyrighted work;

1 (3) the amount and substantiality of the portion used in rela-
2 tion to the copyrighted work as a whole; and

3 (4) the effect of the use upon the potential market for or value
4 of the copyrighted work.

5 **§ 7. Limitations on exclusive rights: effect of transfer of particu-**
6 **lar copy or phonorecord.**

7 (a) Notwithstanding the provisions of section 5(a)(3), the owner
8 of a particular copy or phonorecord lawfully made under this title
9 is entitled, without the authority of the copyright owner, to sell or
10 otherwise dispose of the possession of that copy or phonorecord.

11 (b) Notwithstanding the provisions of section 5(a)(5), the owner
12 of a particular copy of a pictorial, graphic, or sculptural work law-
13 fully made under this title is entitled, without the authority of the
14 copyright owner, to exhibit that copy publicly by showing it to
15 viewers present at the place where the copy is located.

16 (c) The privileges prescribed by subsections (a) and (b) do not
17 extend to any person who has acquired possession of the copy or
18 phonorecord by rental, lease, loan, or any method of disposition ex-
19 cept sale or other lawful transfer of ownership.

20 **§ 8. Limitations on exclusive rights: exemption of certain per-**
21 **formances and exhibitions.**

22 Notwithstanding the provisions of section 5, the performance of a
23 nondramatic literary or musical work, or the exhibition of a pictorial,
24 graphic, or sculptural work, is not an infringement of copyright in
25 any of the following cases:

26 (1) performance or exhibition of the work by instructors or
27 pupils in the course of face-to-face teaching activities;

28 (2) performance or exhibition of the work by or in the course
29 of a broadcast or other transmission made for reception solely
30 within nonprofit educational institutions;

31 (3) performance or exhibition of the work in the course of
32 services at a place of worship or other religious assembly;

33 (4) performance of the work, otherwise than in a broadcast
34 to the public, without any purpose of direct or indirect commer-
35 cial advantage and without payment of any salary, fee, or other
36 compensation to the performers, if:

37 (A) there is no direct or indirect admission charge, or

38 (B) the proceeds, after deducting the reasonable costs of
39 producing the performance, are used exclusively for educa-

1 tional, religious, or charitable purposes and not for private
2 financial gain.

3 **§ 9. Scope of exclusive rights in pictorial, graphic, and sculptural**
4 **works.**

5 (a) Subject to the provisions of clauses (1) and (2) of this sub-
6 section, the exclusive right to reproduce a copyrighted pictorial,
7 graphic, or sculptural work in copies under section 5 includes the right
8 to reproduce the work in any kind of article, whether useful or other-
9 wise.

10 (1) This title does not afford, to the owner of copyright in a
11 work that portrays a useful article as such, any greater rights
12 with respect to the making, distribution, or exhibition of the
13 useful article so portrayed than those afforded to such copyrighted
14 works under the law in effect on December 31, 1966.

15 (2) In the case of a work lawfully reproduced in useful articles
16 that have been offered for sale or other distribution to the public,
17 copyright does not include any right to prevent the making, dis-
18 tribution, or exhibition of pictures or photographs in connection
19 with advertisements or commentaries relating to the distribution
20 or exhibition of such articles, or in connection with news reports.

21 (b) A "useful article" is an article having an intrinsic utilitarian
22 function that is not merely to portray the appearance of the article
23 or to convey information. An article that is normally a part of a
24 useful article is considered a "useful article."

25 **§ 10. Scope of exclusive rights in sound recordings.**

26 (a) The exclusive rights of the owner of copyright in a sound
27 recording are limited to the rights specified by clauses (1) and (3)
28 of section 5(a), and do not include any right of performance under
29 section 5(a) (4).

30 (b) The exclusive right of the owner of copyright in a sound
31 recording to reproduce it under section 5(a) (1) is limited to the right
32 to duplicate the sound recording in the form of phonorecords that
33 directly or indirectly recapture the actual sounds fixed in the record-
34 ing. This right does not extend to the making or duplication of
35 another sound recording that is an independent fixation of other
36 sounds, even though such sounds imitate or simulate those in the
37 copyrighted sound recording.

38 (c) This section does not limit or impair the exclusive right to per-
39 form publicly, by means of a phonorecord, any of the works specified
40 by section 5(a) (4).

1 **§ 11. Scope of exclusive rights in nondramatic musical works:**
 2 **compulsory license for making and distributing phono-**
 3 **records.**

4 In the case of nondramatic musical works, the exclusive rights
 5 provided by clauses (1) and (3) of section 5(a), to make and to dis-
 6 tribute phonorecords of such works, are subject to compulsory licen-
 7 sing under the conditions specified by this section.

8 (a) **AVAILABILITY AND SCOPE OF COMPULSORY LICENSE.—**

9 (1) When phonorecords of a nondramatic musical work have
 10 been distributed to the public under the authority of the copy-
 11 right owner, any other person may, by complying with the pro-
 12 visions of this section, obtain a compulsory license to make and
 13 distribute phonorecords of the work. A person may obtain a
 14 compulsory license only if his purpose in making phonorecords
 15 is to distribute them to the public.

16 (2) A compulsory license includes the privilege of making a
 17 musical arrangement of the work to the extent necessary to con-
 18 form it to the style or manner of interpretation of the perform-
 19 ance involved, but the arrangement shall not change the basic
 20 melody or fundamental character of the work, and shall not be
 21 subject to protection as a derivative work under this title, except
 22 with the express consent of the copyright owner.

23 (b) **NOTICE OF INTENTION TO OBTAIN COMPULSORY LICENSE.—**

24 (1) Any person who wishes to obtain a compulsory license
 25 under this section shall, before making any phonorecords of the
 26 work, serve notice of his intention to do so on the copyright
 27 owner. If the registration or other public records of the Copy-
 28 right Office do not identify the copyright owner, it shall be suffi-
 29 cient to file the notice of intention in the Copyright Office. The
 30 notice shall comply, in form, content, and manner of service, with
 31 requirements that the Register of Copyright shall prescribe by
 32 regulation.

33 (2) Failure to serve or file the notice as required in clause (1)
 34 forecloses the possibility of a compulsory license and, in the ab-
 35 sence of a negotiated license, renders the making and distribution
 36 of phonorecords fully actionable as acts of infringement under
 37 section 35.

38 (c) **ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—**

39 (1) To be entitled to receive royalties under a compulsory
 40 license, the copyright owner must be identified in the registration
 41 or other public records of the Copyright Office. The owner is
 42 entitled to royalties for phonorecords made after he is so identified.

1 but he is not entitled to recover for any phonorecords previously
2 made.

3 (2) The royalty under a compulsory license shall be payable
4 for every phonorecord made in accordance with the license. With
5 respect to each work embodied in the phonorecord, the royalty
6 shall be either three cents, or one cent per minute of playing time
7 or fraction thereof, whichever amount is larger.

8 (3) Royalty payments shall be made quarterly, in January,
9 April, July, and October, and shall include all royalties for the
10 three months next preceding. Each quarterly payment shall be
11 accompanied by a detailed statement of account which, upon
12 written demand by the copyright owner, shall be certified as
13 correct by a certified public accountant licensed to practice in
14 the United States.

15 (4) If the copyright owner does not receive the quarterly pay-
16 ment and statement of account when due, he may give written
17 notice to the licensee that, unless the default is remedied within
18 thirty days from the date of the notice, the compulsory license
19 will be automatically terminated. Such termination renders the
20 making and distribution of all phonorecords, for which the roy-
21 alty had not been paid, fully actionable as acts of infringement
22 under section 35.

23 **§ 12. Scope of exclusive rights in nondramatic musical works:**
24 **performance by means of coin-operated machine.**

25 The proprietor of an establishment in which a copyrighted non-
26 dramatic musical work is performed publicly by means of a coin-oper-
27 ated machine is not an infringer unless:

28 (1) alone or jointly with others he owns the machine or has
29 power to exercise primary control over it; or

30 (2) he refuses or fails, promptly after receipt by registered or
31 certified mail of a request by the copyright owner, to make full dis-
32 closure of the identity of the person who owns the machine or has
33 power to exercise primary control over it.

34 **§ 13. Limitations on exclusive rights: public communication of**
35 **broadcasts.**

36 Notwithstanding the provisions of section 5, the following are not
37 infringements of the exclusive right to perform or exhibit a copy-
38 righted work:

39 (1) communication of a broadcast embodying a performance or
40 exhibition of the work to the private rooms of a public establish-
41 ment by means of a system of loudspeakers or other devices, unless

1 the person responsible for the communication or the operator of
2 the establishment alters or adds to the content of the material in-
3 cluded in the broadcast;

4 (2) reception of a broadcast embodying a performance or exhi-
5 bition of the work on a single receiving apparatus of a kind com-
6 monly used in private homes, unless a direct admission fee is
7 charged to see or hear the broadcast, or unless the receiving appa-
8 ratus is coin-operated.

9 **§ 14. Ownership of copyright.**

10 (a) **INITIAL OWNERSHIP.**—Copyright in a work protected under this
11 title vests initially in the author or authors of the work. The au-
12 thors of a joint work are co-owners of copyright in the work.

13 (b) **WORKS MADE FOR HIRE.**—In the case of a work made for hire,
14 the employer or other person for whom the work was prepared is
15 considered the author for purposes of this title, and owns all of the
16 rights comprised in the copyright unless the parties have expressly
17 agreed otherwise.

18 (c) **CONTRIBUTIONS TO COLLECTIVE WORKS.**—Copyright in each sep-
19 arate contribution to a collective work is distinct from copyright in
20 the collective work as a whole, and vests initially in the author of
21 the contribution. In the absence of an express transfer of the copy-
22 right or of any rights under it, the owner of copyright in the collec-
23 tive work is presumed to have acquired only the privilege of repro-
24 ducing and distributing the contribution as part of that particular
25 collective work and any revisions of it.

26 (d) **TRANSFER OF OWNERSHIP.**—

27 (1) The ownership of a copyright may be transferred in whole
28 or in part by any means of conveyance or by operation of law,
29 and may be bequeathed by will or pass as personal property by
30 the applicable laws of intestate succession.

31 (2) Any of the exclusive rights comprised in a copyright, in-
32 cluding any subdivision of the rights specified by section 5, may
33 be transferred and owned separately. The owner of any par-
34 ticular exclusive right is entitled, to the extent of that right, to
35 all of the protection and remedies accorded to the copyright
36 owner by this title.

37 **§ 15. Ownership of copyright as distinct from ownership of ma-**
38 **terial object.**

39 Ownership of a copyright, or of any of the exclusive rights under
40 a copyright, is distinct from ownership of any material object in which
41 the work is embodied. Transfer of ownership of any material object,

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1 including the copy or phonorecord in which the work is first fixed,
2 does not of itself convey any exclusive rights in the copyrighted work
3 embodied in the object; nor, in the absence of an agreement, does
4 transfer of ownership of a copyright or of any exclusive rights under
5 a copyright convey property rights in any material object.

6 **§ 16. Termination of transfers of copyright ownership.**

7 (a) **CONDITIONS FOR TERMINATION.**—In the case of any work other
8 than a work made for hire, a transfer by the author after January 1,
9 1967, otherwise than by will, of copyright or of any exclusive right
10 under a copyright is subject to termination under the following
11 conditions.

12 (1) At any time after 35 years from the date of its execution,
13 the transfer may be terminated by the author who executed it or,
14 if he is dead, by his legal representatives, legatees, or heirs. The
15 termination may be effected notwithstanding any agreement to the
16 contrary, including an agreement to make a will or to make any
17 other future transfer.

18 (2) The termination shall be effected by serving a written
19 notice, stating the effective date of termination, upon the trans-
20 feree at least two years before that date, and recording a copy
21 of the notice in the Copyright Office before that date. The notice
22 shall comply, in form, content, and manner of service, with re-
23 quirements that the Register of Copyrights shall prescribe by
24 regulation.

25 (b) **EFFECT OF TERMINATION.**—Upon the effective date of termina-
26 tion, ownership of all exclusive rights under this title that were cov-
27 ered by the terminated transfer reverts to the person or persons who
28 effected the termination, but with the following limitations.

29 (1) After the termination of a transfer under this section, a
30 derivative work prepared before the termination under the au-
31 thority of the transfer may continue to be utilized under the
32 terms of the transfer, but this privilege does not extend to the
33 preparation after the termination of other derivative works based
34 upon the copyrighted work covered by the terminated transfer.

35 (2) No transfer of or agreement to transfer, for any period
36 of time after the termination, any exclusive right covered by the
37 terminated transfer, is valid unless:

38 (A) it is made after the effective date of termination; or

39 (B) it is made to a person who was the transferee under
40 the terminated transfer.

1 **§ 17. Execution of transfers of copyright ownership.**

2 (a) A transfer of copyright ownership, other than by operation of
3 law, is not valid unless an instrument of conveyance, or a note or
4 memorandum of the transfer, is in writing and signed by the owner of
5 the rights conveyed or his duly authorized agent.

6 (b) A certificate of acknowledgment is not required for the validity
7 of a transfer, but is prima facie evidence of the execution of the trans-
8 fer if:

9 (1) in the case of a transfer executed in the United States, the
10 certificate is issued by a person authorized to administer oaths
11 within the United States; or

12 (2) in the case of a transfer executed in a foreign country, the
13 certificate is issued by a diplomatic or consular officer of the United
14 States, or by a person authorized to administer oaths whose
15 authority is proved by a certificate of such an officer.

16 **§ 18. Recordation of transfers and other documents.**

17 (a) **CONDITIONS FOR RECORDATION.**—Any transfer of copyright own-
18 ership or other document pertaining to a copyright may be recorded in
19 the Copyright Office if the document filed for recordation bears the
20 actual signature of the person who executed it, or if it is accompanied
21 by a sworn or official certification that it is a true copy of the original,
22 signed statement.

23 (b) **CERTIFICATE OF RECORDATION.**—The Register of Copyrights shall,
24 upon receipt of a document as provided by subsection (a) and of the
25 fee provided by section 53, record the document and return it with a
26 certificate of recordation.

27 (c) **RECORDATION AS CONSTRUCTIVE NOTICE.**—Recordation of a docu-
28 ment in the Copyright Office gives all persons constructive notice of
29 the facts stated in the recorded document, but only if:

30 (1) the document, or material attached to it, specifically identi-
31 fies the work to which it pertains so that, after the document is in-
32 dexed by the Register of Copyrights, it would be revealed by a
33 reasonable search under the title or registration number of the
34 work; and

35 (2) registration, as provided by section 30, has been made for
36 the work.

37 (d) **RECORDATION AS PREREQUISITE TO INFRINGEMENT SUIT.**—No per-
38 son claiming by virtue of a transfer to be the owner of copyright or
39 of any exclusive right under a copyright is entitled to institute an
40 infringement action under this title until the instrument of transfer

1 under which he claims has been recorded in the Copyright Office, but
 2 suit may be instituted after such recordation on a cause of action that
 3 arose before recordation.

4 (e) PRIORITY BETWEEN CONFLICTING TRANSFERS.—As between two
 5 conflicting transfers, the one executed first prevails if it is recorded
 6 within two months after its execution in the United States or within
 7 four months after its execution abroad, or at any time before recorda-
 8 tion of the later transfer. Otherwise the later transfer prevails if re-
 9 corded first, and if taken in good faith, for valuable consideration or
 10 on the basis of a binding promise to pay royalties, and without notice
 11 of the earlier transfer.

12 (f) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND
 13 NON-EXCLUSIVE LICENSE.—A non-exclusive license, whether recorded
 14 or not, prevails over a conflicting transfer of copyright ownership if:
 15 (1) the license was taken before execution of the transfer; or
 16 (2) the license was taken in good faith before recordation of
 17 the transfer and without notice of it.

18 **§ 19. Pre-emption with respect to other laws.**

19 (a) On and after January 1, 1967, all rights in the nature of copy-
 20 right in works that come within the subject matter of copyright as
 21 specified by sections 1 and 2, whether created before or after that date
 22 and whether published or unpublished, are governed exclusively by
 23 this title. Thereafter, no person is entitled to copyright, literary
 24 property rights, or any equivalent legal or equitable right in any such
 25 work under the common law or statutes of any State.

26 (b) Nothing in this title annuls or limits any rights or remedies
 27 under the law of any State with respect to:

- 28 (1) unpublished material that does not come within the sub-
 29 ject matter of copyright as specified by sections 1 and 2;
 30 (2) any cause of action arising from undertakings commenced
 31 before January 1, 1967;
 32 (3) activities violating rights that are not equivalent to any
 33 of the exclusive rights within the general scope of copyright as
 34 specified by section 5, including breaches of contract, breaches of
 35 trust, invasion of privacy, defamation, and deceptive trade prac-
 36 tices such as passing off and false representation.

37 **§ 20. Duration of copyright: works created after January 1, 1967.**

38 (a) IN GENERAL.—Copyright in a work created after January 1,
 39 1967, subsists from its creation and, except as provided by the follow-
 40 ing subsections, endures for a term consisting of the life of the author
 41 and 50 years after his death.

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1 (b) JOINT WORKS.—In the case of a joint work prepared by two or
2 more authors who did not work for hire, the copyright endures for
3 a term consisting of the life of the second of the authors to die and 50
4 years after his death.

5 (c) ANONYMOUS WORKS, PSEUDONYMOUS WORKS, AND WORKS MADE
6 FOR HIRE.—In the case of an anonymous work, a pseudonymous work,
7 or a work made for hire, the copyright endures for a term of 75 years
8 from the year of its first publication, or a term of 100 years from the
9 year of its creation, whichever expires first. If, before the end of
10 such term, the identity of the author of an anonymous or pseudony-
11 mous work is revealed in the registration or other public records of
12 the Copyright Office, the copyright in such work endures for the term
13 specified in subsections (a) or (b).

14 (d) RECORDS RELATING TO DEATH OF AUTHORS.—Any person having
15 an interest in a copyright may at any time record in the Copyright
16 Office a statement of the date of death of the author of the copyrighted
17 work, or a statement that the author is still living on a particular
18 date. The statement shall identify the person filing it, the nature
19 of his interest, and the source of his information, and shall comply
20 in form and content with requirements that the Register of Copyrights
21 shall prescribe by regulation. The Register shall maintain current
22 records of information relating to the death of authors of copyrighted
23 works, based on such recorded statements and, to the extent he
24 considers practicable, on data contained in any of the records of the
25 Copyright Office or in other reference sources.

26 (e) PRESUMPTION AS TO AUTHOR'S DEATH.—After a period of 75 years
27 from the year of first publication of a work, or a period of 100 years
28 from the year of its creation, whichever expires first, any person who
29 obtains from the Copyright Office a certified report that the records
30 provided in subsection (d) disclose nothing to indicate that the
31 author of the work is living, or died less than 50 years before, is
32 entitled to the benefits of a presumption that the author has been
33 dead for at least 50 years. Reliance in good faith upon this pre-
34 sumption shall be a complete defense to any any action for infringe-
35 ment under this title.

36 **§ 21. Duration of copyright: works created but not published or**
37 **copyrighted before January 1, 1967.**

38 Copyright in a work created before January 1, 1967, but not there-
39 tofore in the public domain or copyrighted, subsists from January 1,
40 1967, and endures for the term provided by section 20. In no case,

1 however, shall the term of copyright in such a work expire before
2 December 31, 1990; and, if the work is published before December
3 31, 1990, the term of copyright shall not expire before December 31,
4 2015.

5 **§ 22. Duration of copyright: subsisting copyrights.**

6 (a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1967.—The
7 duration of any copyright, the first term of which is subsisting on
8 January 1, 1967, is governed by the provisions of the following two
9 clauses.

10 (1) The copyright shall endure for twenty-eight years from
11 the date it was originally secured: *Provided*, That in the case of
12 any posthumous work or of any periodical, cyclopedic, or other
13 composite work upon which the copyright was originally secured
14 by the proprietor thereof, or of any work copyrighted by a cor-
15 porate body (otherwise than as assignee or licensee of the indi-
16 vidual author) or by an employer for whom such work is made
17 for hire, the proprietor of such copyright shall be entitled to a
18 renewal and extension of the copyright in such work for the fur-
19 ther term of forty-seven years when application for such renewal
20 and extension shall have been made to the Copyright Office and
21 duly registered therein within five years prior to the expiration
22 of the original term of copyright: *And provided further*, That in
23 the case of any other copyrighted work, including a contribution
24 by an individual author to a periodical or to a cyclopedic or other
25 composite work, the author of such work, if still living, or the
26 widow, widower, or children of the author, if the author be not
27 living, or if such author, widow, widower, or children be not liv-
28 ing, then the author's executors or in the absence of a will, his next
29 of kin shall be entitled to a renewal and extension of the copyright
30 in such work for a further term of forty-seven years when applica-
31 tion for such renewal and extension shall have been made to the
32 Copyright Office and duly registered therein within five years
33 prior to the expiration of the original term of copyright: *And*
34 *provided further*, That in default of the registration of such ap-
35 plication for renewal and extension, the copyright in any work
36 shall terminate at the expiration of twenty-eight years from the
37 date copyright was originally secured.

38 (2) Subsisting copyrights originally registered in the Patent
39 Office prior to July 1, 1940, under section 3 of the act of June
40 18, 1874, shall be subject to renewal for a further term of

1 forty-seven years in behalf of the proprietor upon application
2 made to the Register of Copyrights within five years prior to the
3 expiration of the original term of twenty-eight years.

4 (b) COPYRIGHTS IN THEIR RENEWAL TERM ON DECEMBER 31, 1965 OR
5 RENEWED BEFORE JANUARY 1, 1967.—The duration of any copyright, the
6 renewal term of which is subsisting on December 31, 1965, or which
7 is renewed between December 31, 1965 and January 1, 1967, is ex-
8 tended to endure for a term of 75 years from the date copyright was
9 originally secured.

10 (c) OWNERSHIP OF EXTENDED RENEWAL TERM.—In the case of any
11 copyright subsisting in either its first or renewal term on January 1,
12 1967, a transfer of the renewal copyright, or of any exclusive right
13 under it, made before January 1, 1967 by any of the persons desig-
14 nated in the second proviso of subsection (a)(1) of this section is
15 subject to termination in accordance with the following provisions.

16 (1) At any time after 56 years from the date copyright was
17 originally secured, the transfer may be terminated by the person
18 who executed it or, if he is dead, by his legal representatives,
19 legatees, or heirs. The termination may be effected notwith-
20 standing any agreement to the contrary, including an agreement
21 to make a will or to make any other future transfer.

22 (2) The termination shall be effected by serving a written
23 notice, stating the effective date of termination, upon the trans-
24 feree at least one year before that date, and recording a copy of
25 the notice in the Copyright Office before that date. The notice
26 shall comply, in form, content, and manner of service, with re-
27 quirements that the Register of Copyrights shall prescribe by
28 regulation.

29 (3) Upon the effective date of termination, ownership of all
30 exclusive rights under this title that were covered by the termi-
31 nated transfer reverts to the person or persons who effected the
32 termination, but with the following limitations.

33 (A) After the termination of a transfer under this sub-
34 section, a derivative work prepared before the termination
35 under the authority of the transfer may continue to be uti-
36 lized under the terms of the transfer, but this privilege does
37 not extend to the preparation after the termination of other
38 derivative works based upon the copyrighted work covered
39 by the terminated transfer.

1 (B) No transfer of or agreement to transfer, for any
2 period of time after the termination, any exclusive right
3 covered by the terminated transfer, is valid unless:

4 (i) it is made after the effective date of termina-
5 tion; or

6 (ii) it is made to a person who was the transferee
7 under the terminated transfer.

8 (4) Unless and until termination is effected, the transfer, if it
9 does not provide otherwise, continues in effect during the re-
10 mainder of the extended renewal term.

11 **§ 23. Duration of copyright: terminal date.**

12 The term of copyright provided by sections 20 through 22 runs to
13 the end of the calendar year in which it would otherwise expire. ||

14 **§ 24. Notice of copyright: visually-perceptible copies.**

15 (a) GENERAL REQUIREMENT.—Whenever a work protected under
16 this title is published in the United States or elsewhere by authority
17 of the copyright owner, a notice of copyright as provided by this sec-
18 tion shall be placed on all publicly distributed copies from which the
19 work can be visually perceived, either directly or with the aid of a
20 machine or device.

21 (b) FORM OF NOTICE.—The notice appearing on the copies shall con-
22 sist of the following three elements:

23 (1) the symbol © (the letter C in a circle), the word "Copy-
24 right," or the abbreviation "Copr.";

25 (2) the year of first publication of the work; in the case of
26 compilations or derivative works incorporating previously pub-
27 lished material, the year date of first publication of the compila-
28 tion or derivative work is sufficient;

29 (3) the name of the owner of copyright in the work, or an
30 abbreviation by which the name can be recognized, or a generally
31 known alternative designation of the owner.

32 (c) POSITION OF NOTICE.—The notice shall be placed on the copies
33 in such manner and location as to give reasonable notice of the claim
34 of copyright. The Register of Copyrights shall prescribe by regula-
35 tion, as examples, specific methods of affixation and positions of the
36 notice on various types of works that will satisfy this requirement, but
37 these specifications shall not be considered exhaustive. |

1 **§ 25. Notice of copyright: phonorecords of sound recordings.**

2 (a) Whenever a sound recording protected under this title is pub-
3 lished in the United States or elsewhere by authority of the copyright
4 owner, a notice of copyright as provided by this section shall be placed
5 on all publicly distributed phonorecords of the sound recording.

6 (b) **FORM OF NOTICE.**—The notice appearing on the phonorecords
7 shall consist of the following three elements:

8 (1) the symbol © (the letter P in a circle) ;

9 (2) the year of first publication of the sound recording;

10 (3) the name of the owner of copyright in the sound recording,
11 or an abbreviation by which the name can be recognized, or a gen-
12 erally known alternative designation of the owner; if the record
13 producer is named on the record labels or containers, and if no
14 other name appears in conjunction with the notice, his name shall
15 be considered a part of the notice.

16 (c) **POSITION OF NOTICE.**—The notice shall be placed on the sur-
17 face of the phonorecord, or on the label or container intended to remain
18 with it, in such manner and location as to give reasonable notice of
19 the claim of copyright.

20 (d) **EFFECTIVE DATE OF REQUIREMENT.**—The requirements of this
21 section apply to all phonorecords publicly distributed on or after
22 January 1, 1967.

23 **§ 26. Notice of copyright: contributions to collective works.**

24 (a) A separate contribution to a collective work may bear its own
25 notice of copyright, as provided by sections 24 and 25. However, a
26 single notice applicable to the collective work as a whole is sufficient
27 to satisfy the requirements of sections 24 and 25 with respect to the
28 separate contributions it contains (not including advertisements in-
29 serted on behalf of persons other than the owner of copyright in the
30 collective work), regardless of the ownership of copyright in the con-
31 tributions and whether or not they have been previously published.

32 (b) Where the person named in a single notice applicable to a col-
33 lective work as a whole is not the owner of copyright in a separate con-
34 tribution that does not bear its own notice, the case is governed by the
35 provisions of section 28(a).

36 **§ 27. Notice of copyright: omission of notice.**

37 (a) **EFFECT OF OMISSION ON COPYRIGHT.**—The omission of the copy-
38 right notice prescribed by sections 24 and 25 from copies or phono-

1 (2) a document executed by the person named in the notice and
2 showing the ownership of the copyright had been recorded as
3 provided by section 18.

4 The person named in the notice is liable to account to the copyright
5 owner for all receipts from purported transfers or licenses made by
6 him under the copyright.

7 (b) **ERROR IN DATE.**—Where the year date in the notice on copies or
8 phonorecords distributed by authority of the copyright owner is ear-
9 lier than the year in which publication first occurred, any period com-
10 puted from the year of first publication under section 20 is to be com-
11 puted from the year in the notice. Where the year date is more than
12 one year later than the year in which publication first occurred, the
13 work is considered to have been published without any notice and is
14 governed by the provisions of section 27.

15 (c) **OMISSION OF NAME OR DATE.**—Where copies or phonorecords
16 publicly distributed by authority of the copyright owner contain no
17 name or no date that could reasonably be considered a part of the
18 notice, the work is considered to have been published without any
19 notice and is governed by the provisions of section 27.

20 **§ 29. Deposit of copies or phonorecords for Library of Congress.**

21 (a) Except as provided by subsection (c), the owner of copyright
22 or of the exclusive right of publication in a work published with notice
23 of copyright in the United States shall deposit, within three months
24 after the date of such publication :

25 (1) two complete copies of the best edition ; or

26 (2) if the work is a sound recording, two complete phono-
27 records of the best edition, together with any printed or other
28 visually-perceptible material published with such phonorecords.

29 This deposit is not a condition of copyright protection.

30 (b) The required copies or phonorecords shall be deposited in the
31 Copyright Office for the use or disposition of the Library of Congress.
32 The Register of Copyrights shall, when requested by the depositor
33 and upon payment of the fee prescribed in section 53, issue a receipt for
34 the deposit.

35 (c) The Register of Copyrights may by regulation exempt any
36 categories of material from the deposit requirements of this section,
37 or require deposit of only one copy or phonorecord with respect to
38 any categories.

39 (d) At any time after publication of a work as provided by sub-
40 section (a), the Register of Copyrights may make written demand

1 records publicly distributed by authority of the copyright owner does
2 not invalidate the copyright in a work if:

3 (1) the notice has been omitted from no more than a relatively
4 small number of copies or phonorecords distributed to the pub-
5 lic; or

6 (2) registration for the work under section 30 has been made
7 before or is made within five years after the publication without
8 notice, and a reasonable effort is made to add notice to all copies
9 or phonorecords that are distributed to the public after the omis-
10 sion has been discovered.

11 (b) EFFECT OF OMISSION ON INNOCENT INFRINGERS.—Any person who
12 innocently begins an undertaking that infringes a copyright incurs no
13 liability for damages or profits under section 38 if he proves that he
14 was misled by the omission of notice and if he undertook the infringe-
15 ment before receiving actual notice that registration for the work
16 had been made under section 30. In a suit for infringement in such
17 a case the court may require, as a condition for enjoining the comple-
18 tion of the undertaking, that the infringer be reimbursed for any rea-
19 sonable expenditure incurred by him, and the court may require, as a
20 condition for permitting the infringer to complete his undertaking,
21 that he pay the copyright owner a reasonable license fee in an amount
22 and on terms fixed by the court.

23 (c) REMOVAL OF NOTICE.—Protection under this title is not affected
24 by the removal, destruction, or obliteration of the notice, without the
25 authorization of the copyright owner, from any publicly-distributed
26 copies or phonorecords.

27 **§ 28. Notice of copyright: error in name or date.**

28 (a) ERROR IN NAME.—Where the person named in the copyright
29 notice on copies or phonorecords publicly distributed by authority of
30 the copyright owner is not the owner of copyright, the validity and
31 ownership of the copyright is not affected. In such a case, however,
32 any person who innocently begins an undertaking that infringes the
33 copyright has a complete defense to any action for such infringement
34 if he proves that he was misled by the notice and began the under-
35 taking in good faith under a purported transfer or license from the
36 person named therein, unless before the undertaking was begun:

37 (1) registration for the work under section 30 had been made in
38 the name of the owner of copyright; or

1 for the required deposit on any of the persons obligated to make the
2 deposit under subsection (a). Unless deposit is made within three
3 months after the demand is received, the person or persons on whom
4 the demand was made are liable:

5 (1) to a fine of not more than \$250 for each work; and

6 (2) to pay to the Library of Congress the total retail price of
7 the copies or phonorecords demanded, or, if no retail price has
8 been fixed, the reasonable cost to the Library of Congress of
9 acquiring them.

10 **§ 30. Copyright registration in general.**

11 (a) **REGISTRATION PERMISSIVE.**—At any time during the subsistence
12 of copyright in any published or unpublished work, the owner of copy-
13 right or of any exclusive right in the work may obtain registration
14 of the copyright claim by delivering to the Copyright Office the deposit
15 specified by this section, together with the application and fee specified
16 by sections 31 and 53. Subject to the provisions of section 27(a),
17 such registration is not a condition of copyright protection.

18 (b) **DEPOSIT FOR COPYRIGHT REGISTRATION.**—Except as provided in
19 subsection (c), the material deposited for registration shall include:

20 (1) in the case of an unpublished work, one complete copy or
21 phonorecord;

22 (2) in the case of a published work, two complete copies or
23 phonorecords of the best edition;

24 (3) in the case of a work first published abroad, one complete
25 copy or phonorecord as so published;

26 (4) in the case of a contribution to a collective work, one com-
27 plete copy or phonorecord of the best edition of the collective
28 work.

29 Copies or phonorecords deposited for the Library of Congress under
30 section 29 may be used to satisfy the deposit provisions of this section,
31 if they are accompanied by the prescribed application and fee, and by
32 any additional identifying material that the Register may, by regula-
33 tion, require.

34 (c) **ADMINISTRATIVE CLASSIFICATION AND OPTIONAL DEPOSIT.**—The
35 Register of Copyrights is authorized to specify by regulation the
36 administrative classes into which works are to be placed for purposes
37 of deposit and registration, and the nature of the copies or phono-
38 records to be deposited in the various classes specified. The regula-
39 tions may require or permit, for particular classes, the deposit of
40 identifying material instead of copies or phonorecords, the deposit

1 of only one copy or phonorecord where two would normally be re-
2 quired, or a single registration for a group of related works. This
3 administrative classification of works has no significance with respect
4 to the subject matter of copyright or the exclusive rights provided by
5 this title.

6 (d) CORRECTIONS AND AMPLIFICATIONS.—The Register may also
7 establish, by regulation, formal procedures for the filing of an applica-
8 tion for supplementary registration, to correct an error in a copyright
9 registration or to amplify the information given in a registration.
10 Such application shall be accompanied by the fee provided in section
11 53, and shall clearly identify the registration to be corrected or ampli-
12 fied. The information contained in a supplementary registration aug-
13 ments but does not supersede that contained in the earlier registration.

14 (e) PUBLISHED EDITION OF PREVIOUSLY REGISTERED WORK.—Registra-
15 tion for the first published edition of a work previously registered in
16 unpublished form may be made regardless of whether the work as
17 published is substantially the same as the unpublished version or con-
18 tains material on which to base a new copyright.

19 **§ 31. Application for registration.**

20 The application for copyright registration shall be made on a form
21 prescribed by the Register of Copyrights and shall include:

- 22 (1) the name and address of the copyright claimant;
- 23 (2) in the case of a work other than an anonymous or pseudon-
24 ymous work, the name and nationality or domicile of the author
25 or authors and, if one or more of the authors is dead, the date
26 of their deaths;
- 27 (3) if the work is anonymous or pseudonymous, the national-
28 ity or domicile of the author or authors;
- 29 (4) if any part of the work was made for hire, a statement to
30 this effect;
- 31 (5) if the copyright claimant is not the author, a brief state-
32 ment of how the claimant obtained ownership of the copyright;
- 33 (6) the title of the work, together with any previous or al-
34 ternative titles under which the work can be identified;
- 35 (7) the year in which creation of the work was completed;
- 36 (8) if the work has been published, the date and nation of
37 its first publication;
- 38 (9) in the case of a compilation or derivative work, an identi-
39 fication of any pre-existing work or works that it is based on or

1 incorporates, and a brief, general statement of the additional
2 material covered by the copyright claim being registered; and
3 (10) any other information regarded by the Register of Copy-
4 rights as bearing upon the identification of the work or the exist-
5 ence, ownership, or duration of the copyright.

6 **§ 32. Registration of claim and issuance of certificate.**

7 (a) When, after examination, the Register of Copyrights deter-
8 mines that the material deposited constitutes copyrightable subject
9 matter and that the other legal and formal requirements of this title
10 have been met, he shall register the claim and issue to the applicant a
11 certificate of registration under the seal of the Copyright Office. The
12 certificate shall contain the information given in the application, to-
13 gether with the number and effective date of the registration.

14 (b) In any case in which the Register of Copyrights determines
15 that the material deposited does not constitute copyrightable subject
16 matter or that the claim is invalid for any other reason, he shall re-
17 fuse registration and shall notify the applicant in writing of the rea-
18 sons for his action.

19 (c) In any judicial proceedings the certificate of a registration
20 made before or within five years after first publication of the work
21 shall constitute prima facie evidence of the validity of the copyright
22 and of the facts stated in the certificate. The evidentiary weight to be
23 accorded the certificate of a registration made thereafter shall be
24 within the discretion of the court.

25 (d) The effective date of a copyright registration is the day on
26 which an acceptable application, deposit, and fee have all been received
27 in the Copyright Office.

28 **§ 33. Registration as prerequisite to infringement suit.**

29 No action for infringement of the copyright in any work shall be
30 instituted until registration of the copyright claim has been made in
31 accordance with this title. In any case, however, where the deposit,
32 application, and fee required for registration have been delivered to
33 the Copyright Office in proper form and registration has been refused,
34 the applicant is entitled to institute an action for infringement if
35 notice thereof, with a copy of the complaint, is served on the Register
36 of Copyrights. The Register may, at his option, become a party to
37 the action with respect to the issue of registrability of the copyright
38 claim by entering his appearance within sixty days after such service,

1 but his failure to do so shall not deprive the court of jurisdiction to
2 determine that issue.

3 **§ 34. Registration as prerequisite to certain remedies for infringe-**
4 **ment.**

5 In any action under this title, no award of statutory damages or of
6 attorney's fees, as provided by sections 38 and 39, shall be made for
7 any infringement commenced before registration.

8 **§ 35. Infringement of copyright.**

9 (a) Anyone who violates any of the exclusive rights of the copy-
10 right owner as provided by sections 5 through 13, or who imports
11 copies or phonorecords into the United States in violation of section
12 44, is an infringer of the copyright.

13 (b) The legal or beneficial owner of an exclusive right under a copy-
14 right is entitled, subject to the requirements of sections 18(d) and 33,
15 to institute an action for any infringement of that particular right
16 committed while he is the owner of it. The court may require him
17 to serve written notice of the action with a copy of the complaint upon
18 any person shown, by the records of the Copyright Office or otherwise,
19 to have or claim an interest in the copyright, and shall require that
20 such notice be served upon any person whose interest is likely to be
21 affected by a decision in the case. The court may require the joinder,
22 and shall permit the intervention, of any person having or claiming
23 an interest in the copyright.

24 **§ 36. Remedies for infringement: injunctions.**

25 (a) Any court having jurisdiction of a civil action arising under
26 this title may, subject to the provisions of section 27(b) of this title
27 and of section 1498 of title 28, grant injunctions on such terms as it
28 may deem reasonable to prevent or restrain infringement of a copy-
29 right.

30 (b) Any such injunction may be served anywhere in the United
31 States on the person enjoined; it shall be operative throughout the
32 United States and shall be enforceable, by proceedings in contempt
33 or otherwise, by any United States court having jurisdiction of that
34 person. The clerk of the court granting the injunction shall, when
35 requested by any other court in which enforcement of the injunction
36 is sought, transmit promptly to the other court a certified copy of all
37 the papers in the case on file in his office.

1 **§ 37. Remedies for infringement: impounding and disposition of**
2 **infringing articles.**

3 (a) At any time while an action under this title is pending, the court
4 may order the impounding, on such terms as it may deem reasonable,
5 of all copies or phonorecords claimed to have been made or used in
6 violation of the copyright owner's exclusive rights, and of all plates,
7 molds, matrices, masters, tapes, film negatives, or other articles by
8 means of which such copies or phonorecords may be reproduced.

9 (b) As part of a final judgment or decree, the court may order the
10 destruction or other reasonable disposition of all copies or phono-
11 records found to have been made or used in violation of the copyright
12 owner's exclusive rights, and of all plates, molds, matrices, masters,
13 tapes, film negatives, or other articles by means of which such copies
14 or phonorecords may be reproduced.

15 **§ 38. Remedies for infringement: damages and profits.**

16 (a) **IN GENERAL.**—Except as otherwise provided by this title, an in-
17 fringer of copyright is liable for either:

- 18 (1) the copyright owner's actual damages and any additional
19 profits of the infringer, as provided by subsection (b); or
20 (2) statutory damages, as provided by subsection (c).

21 (b) **ACTUAL DAMAGES AND PROFITS.**—The copyright owner is entitled
22 to recover the actual damages suffered by him as a result of the in-
23 fringement, and any profits of the infringer that are attributable to the
24 infringement and are not taken into account in computing the actual
25 damages. In establishing the infringer's profits, the copyright owner
26 is required to present proof only of the infringer's gross revenue, and
27 the infringer is required to prove his deductible expenses and the ele-
28 ments of profit attributable to factors other than the copyrighted
29 work.

30 (c) **STATUTORY DAMAGES.**—Instead of actual damages and profits, the
31 copyright owner is entitled, at his election, to an award of statutory
32 damages for all infringements of any one work for which the infringer
33 is liable, in a sum of not less than \$250 or more than \$10,000 as the
34 court considers just. In a case where the copyright owner proves that
35 infringement was committed willfully after service upon the infringer
36 of a written notice to desist, the court in its discretion may award statu-
37 tory damages of more than \$10,000. For the purposes of this subsec-

1 tion, all the parts of a compilation or derivative work constitute one
2 work.

3 **§ 39. Remedies for infringement: costs and attorney's fees.**

4 In any civil action under this title, the court in its discretion may
5 allow the recovery of full costs by or against any party other than
6 the United States or an officer thereof. Except as otherwise provided
7 by this title, the court may also award a reasonable attorney's fee to the
8 prevailing party as part of the costs.

9 **§ 40. Criminal offenses.**

10 (a) **CRIMINAL INFRINGEMENT.**—Any person who infringes a copy-
11 right willfully and for purposes of commercial advantage or private
12 financial gain shall be fined not more than \$2,500 or imprisoned not
13 more than one year, or both, for the first such offense, and shall be
14 fined not more than \$10,000 or imprisoned not more than three years,
15 or both, for any subsequent offense.

16 (b) **FRAUDULENT COPYRIGHT NOTICE.**—Any person who, with fraud-
17 ulent intent, places on any article a notice of copyright or words of
18 the same purport that he knows to be false, or who, with fraudulent
19 intent, publicly distributes or imports for public distribution any
20 article bearing such notice or words that he knows to be false, shall be
21 fined not more than \$2,500.

22 (c) **FRAUDULENT REMOVAL OF COPYRIGHT NOTICE.**—Any person who,
23 with fraudulent intent, removes or alters any notice of copyright
24 appearing on a copy of a copyrighted work shall be fined not more
25 than \$2,500.

26 (d) **FALSE REPRESENTATION.**—Any person who knowingly makes a
27 false representation of a material fact in the application for copyright
28 registration provided for by section 31, or in any written statement
29 filed in connection with the application, shall be fined not more than
30 \$2,500.

31 **§ 41. Limitations on actions.**

32 (a) **CRIMINAL PROCEEDINGS.**—No criminal proceeding shall be main-
33 tained under the provisions of this title unless it is commenced within
34 three years after the cause of action arose.

35 (b) **CIVIL ACTIONS.**—No civil action shall be maintained under the
36 provisions of this title unless it is commenced within three years after
37 the claim accrued.

38 **§ 42. Notification of filing and determination of actions.**

39 (a) Within one month after the filing of any action under this
40 title, the clerks of the courts of the United States shall send written

1 notification to the Register of Copyrights setting forth, as far as is
2 shown by the papers filed in the court, the names and addresses of the
3 parties and the title, author, and registration number of each work
4 involved in the action. If any other copyrighted work is later in-
5 cluded in the action by amendment, answer, or other pleading, the
6 clerk shall also send a notification concerning it to the Register within
7 one month after the pleading is filed.

8 (b) Within one month after any final order or judgment is issued
9 in the case, the clerk of the court shall notify the Register of it, send-
10 ing him a copy of the order or judgment together with the written
11 opinion, if any, of the court. Upon receiving the notification the
12 Register shall enter the pertinent information in the public records of
13 the Copyright Office.

14 **§ 43. Manufacture and importation of certain copies.**

15 (a) Except as provided by subsection (b), the importation into the
16 United States of copies of a work consisting preponderantly of non-
17 dramatic literary material that is in the English language and is pro-
18 tected under this title is prohibited unless the portions consisting of
19 such material have been wholly manufactured in the United States.

20 (b) The provisions of subsection (a) do not apply:

21 (1) where, on the date when importation is sought, the author
22 of any substantial part of such material is neither a citizen nor a
23 domiciliary of the United States;

24 (2) where the Bureau of Customs is presented with an import
25 statement issued under the seal of the Copyright Office, in which
26 case a total of no more than 3,500 copies of any one such work
27 shall be allowed entry; the import statement shall be issued upon
28 request to the copyright owner or to a person designated by him
29 at the time of registration for the work under section 30 or at any
30 time thereafter;

31 (3) where importation is sought under the authority or for the
32 use, other than in schools, of the government of the United States
33 or of any State;

34 (4) where importation, for use and not for sale, is sought:

35 (A) by any person with respect to no more than one copy
36 of any one work at any one time;

37 (B) by any person arriving from abroad, with respect to
38 copies forming part of his personal baggage; or

39 (C) by an organization operated for scholarly, educational,
40 or religious purposes and not for private gain, with respect
41 to copies intended to form a part of its library.

1 (5) where the copies are reproduced in raised characters for
2 the use of the blind.

3 (c) A copy has not been wholly manufactured in the United States
4 if any step in the process of its reproductive manufacture, including
5 but not limited to the composition of type and the preparation of
6 sheets, film, plates, mats, reproduction proofs, tapes, or other devices
7 for the reproduction of copies by any process, the presswork or other
8 process for duplicating copies, and the binding, if any, took place
9 outside the United States.

10 (d) Manufacture or importation of copies in violation of this section
11 does not invalidate protection for a work under this title. However,
12 in any action for infringement of the exclusive rights to make and
13 distribute copies of the work, the infringer has a complete defense if
14 he proves:

15 (1) that the owner of such exclusive rights had authorized or
16 knowingly acceded in the importation of copies in violation of
17 this section; or

18 (2) that more than 3,500 copies not wholly manufactured in
19 the United States had been publicly distributed in the United
20 States by authority of the owner of such exclusive rights.

21 **§ 44. Infringing importation of copies or phonorecords.**

22 (a) Importation into the United States, without the authority of
23 the owner of copyright under this title, of copies or phonorecords of
24 a work for the purpose of distribution to the public is an infringement
25 of the exclusive right to distribute copies or phonorecords under
26 section 5, actionable under section 35.

27 (b) Where the making of the copies or phonorecords would have
28 constituted an infringement of copyright if this title had been appli-
29 cable, their importation is prohibited; but the Bureau of Customs has
30 no authority to prevent importation when the copies or phonorecords
31 were lawfully made. In either case, the Secretary of the Treasury is
32 authorized to prescribe, by regulation, a procedure under which any
33 person claiming an interest in the copyright in a particular work may,
34 upon payment of a specified fee, be entitled to notification by the
35 Bureau of the importation of articles that appear to be copies or
36 phonorecords of the work.

37 **§ 45. Importation prohibitions: enforcement and disposition of**
38 **excluded articles.**

39 (a) The Secretary of the Treasury and the Postmaster General
40 shall separately or jointly make regulations for the enforcement of
41 the provisions of this title prohibiting importation.

1 (b) These regulations may require, as a condition for the exclusion
2 of articles under section 44:

3 (1) that the person seeking exclusion obtain a court order
4 enjoining importation of the articles; or

5 (2) that he furnish proof, of a specified nature and in accord-
6 ance with prescribed procedures, that the copyright in which he
7 claims an interest is valid and that the importation would violate
8 the prohibition in section 44; he may also be required to post a
9 surety bond for any injury that may result if the detention or
10 exclusion of the articles proves to be unjustified.

11 (c) Articles imported in violation of the importation prohibitions
12 of this title are subject to seizure and forfeiture in the same manner as
13 property imported in violation of the customs revenue laws. For-
14 feited articles shall be destroyed as directed by the Secretary of the
15 Treasury or the court, as the case may be; however, the articles may be
16 returned to the country of export whenever it is shown to the satisfac-
17 tion of the Secretary of the Treasury that the importer had no reason-
18 able grounds for believing that his acts constituted a violation of
19 law.

20 **§ 46. The Copyright Office: general responsibilities and organiza-**
21 **tion.**

22 (a) All administrative functions and duties under this title, except
23 as otherwise specified, are the responsibility of the Register of Copy-
24 rights as director of the Copyright Office in the Library of Congress.
25 The Register of Copyrights, together with the subordinate officers
26 and employees of the Copyright Office, shall be appointed by the
27 Librarian of Congress, and shall act under his general direction and
28 supervision.

29 (b) The seal used in the Copyright Office on December 31, 1966 shall
30 continue to be used to authenticate all certified documents issued by
31 the Office.

32 (c) The Register of Copyrights shall make an annual report to the
33 Librarian of Congress of the work and accomplishments of the Copy-
34 right Office during the previous fiscal year. The annual report of the
35 Register of Copyrights shall be published separately and as a part of
36 the annual report of the Librarian of Congress.

37 **§ 47. Copyright Office regulations.**

38 The Register of Copyrights is authorized to establish regulations not
39 inconsistent with law for the administration of the functions and duties
40 made his responsibility under this title. All regulations established

1 by the Register under this title are subject to the approval of the
2 Librarian of Congress.

3 **§ 48. Effective date of actions in Copyright Office.**

4 In any case in which time limits are prescribed under this title for
5 the performance of an action in the Copyright Office, and in which
6 the last day of the prescribed period falls on a Saturday, Sunday,
7 holiday or other non-business day within the District of Columbia or
8 the Federal Government, the action may be taken on the next suc-
9 ceeding business day, and is effective as of the date when the period
10 expired.

11 **§ 49. Retention and disposition of articles deposited in Copyright**
12 **Office.**

13 (a) Upon their deposit in the Copyright Office under sections 29
14 and 30, all copies and phonorecords, including those deposited in con-
15 nection with claims that have been refused registration, are the prop-
16 erty of the United States Government.

17 (b) In the case of published works, all copies and phonorecords
18 deposited are available to the Library of Congress for its collections,
19 or for exchange or transfer to any other library. In the case of un-
20 published works, the Library is entitled to select any deposits for its
21 collections.

22 (c) Deposits not selected by the Library under subsection (b), or
23 identifying portions or reproductions of them, shall be retained under
24 the control of the Copyright Office or in Government storage facilities
25 for the longest period considered practicable and desirable by the
26 Register of Copyrights and the Librarian of Congress. After that
27 period it is within the joint discretion of the Register and Librarian
28 to order their destruction or other disposition; but, in the case of un-
29 published works, no deposit shall be destroyed or otherwise disposed
30 of during its term of copyright without specific notice to the copy-
31 right owner of record at his last address given in the public records
32 of the Copyright Office, permitting him to claim and remove it.

33 **§ 50. Copyright Office records: preparation, maintenance, public**
34 **inspection, and searching.**

35 (a) The Register of Copyrights shall provide and keep in the
36 Copyright Office records of all deposits, registrations, recordations,
37 and other actions taken under this title, and shall prepare indexes of
38 all such records.

39 (b) Such records and indexes, as well as the articles deposited in
40 connection with completed copyright registrations and retained un-

1 der the control of the Copyright Office, shall be open to public in-
2 spection.

3 (c) Upon request and payment of the fee specified by section 53,
4 the Copyright Office shall make a search of its public records, in-
5 dexes, and deposits, and shall furnish a report of the information they
6 disclose with respect to any particular deposits, registrations, or re-
7 corded documents.

8 **§ 51. Copies of Copyright Office records.**

9 (a) Copies may be made of any public records or indexes of the
10 Copyright Office; additional certificates of copyright registration and
11 copies of any public records or indexes may be furnished upon request
12 and payment of the fees specified by section 53.

13 (b) Copies of deposited articles retained under the control of the
14 Copyright Office shall be authorized or furnished only under the con-
15 ditions specified by the Copyright Office regulations.

16 **§ 52. Copyright Office forms and publications.**

17 (a) CATALOG OF COPYRIGHT ENTRIES.—The Register of Copyrights
18 shall compile and publish at periodic intervals catalogs of all copy-
19 right registrations. These catalogs shall be divided into parts in
20 accordance with the various classes of works, and the Register has
21 discretion to determine, on the basis of practicability and usefulness,
22 the form and frequency of publication of each particular part.

23 (b) OTHER PUBLICATIONS.—The Register shall furnish, free of
24 charge upon request, application forms for copyright registration and
25 general informational material in connection with the functions of the
26 Copyright Office. He also has authority to publish compilations of
27 information, bibliographies, and other material he considers to be
28 of value to the public.

29 (c) DISTRIBUTION OF PUBLICATIONS.—All publications of the Copy-
30 right Office shall be furnished to depository libraries as specified under
31 the Depository Library Act of 1962 (76 Stat. 353, 44 U.S.C. 82), and,
32 aside from those furnished free of charge, shall be offered for sale
33 to the public at prices based on the cost of reproduction and distri-
34 bution.

35 **§ 53. Copyright Office fees.**

36 The following fees shall be paid to the Register of Copyrights:

37 (1) for the registration of a copyright claim or a supple-
38 mentary registration under section 30, or for the registration of a
39 claim to renewal of a subsisting copyright in its first term under
40 section 22(a), including the issuance of a certificate of registra-
41 tion, \$6;

1 (2) for the issuance of a receipt for a deposit under section 29,
2 \$2;

3 (3) for the recordation, as provided by section 18, of a trans-
4 fer of copyright ownership or other document of six pages or
5 less, covering no more than one title, \$5; for each page over six
6 and for each title over one, 50 cents additional;

7 (4) for the filing, under section 11(b), of a notice of intention
8 to make phonorecords, \$3;

9 (5) for the recordation, under section 20(d), of a statement
10 relating to the death of an author, \$5;

11 (6) for the issuance, under section 43, of an import statement,
12 \$3;

13 (7) for the issuance, under section 51, of an additional certifi-
14 cate of registration, \$2;

15 (8) for the issuance of any other certification, \$3; the Register
16 of Copyrights has discretion, on the basis of their cost, to fix the
17 fees for preparing copies of Copyright Office records, whether
18 they are to be certified or not;

19 (9) for the making and reporting of a search as provided by
20 section 50, and for any related services, \$5 for each hour or frac-
21 tion of an hour consumed;

22 (10) for any other special services requiring a substantial
23 amount of time, such fees as the Register of Copyrights may fix
24 on the basis of the cost of providing the service.

25 **§ 54. Definitions.**

26 As used in this title, the following terms and their variant forms
27 mean the following, unless the context clearly indicates otherwise:

28 — An "anonymous work" is a work on the copies or phonorecords of
29 which no natural person is identified as author.

30 — The "best edition" of a work is the edition, published in the
31 United States at any time before the date of deposit, that the
32 Library of Congress determines to be most suitable for its
33 purposes.

34 — A "collective work" is a work, such as a periodical issue, anthol-
35 ogy, or encyclopedia, in which a number of contributions,
36 constituting separate and independent works in themselves, are
37 assembled into a collective whole.

38 — A "compilation" is a work formed by the collection and assem-
39 bling of pre-existing materials or of data that are selected, co-
40 ordinated, or arranged in such a way that the resulting work

- 1 as a whole constitutes an original work of authorship. The
2 term "compilation" includes collective works.
- 3 — "Copies" are material objects, other than phonorecords, in which
4 a work is fixed or reproduced by any method now known or
5 later developed, and from which the work can be perceived, re-
6 produced, or otherwise communicated, either directly or with
7 the aid of a machine or device.
- 8 — "Copyright owner," with respect to any one of the exclusive
9 rights comprised in a copyright, refers to the owner of that
10 particular right.
- 11 — A work is "created" when it is fixed in a copy or phonorecord for
12 the first time; where a work is prepared over a period of time,
13 the portion of it that has been fixed at any particular time con-
14 stitutes the work as of that time, and where the work has been
15 prepared in different versions, each version constitutes a sepa-
16 rate work.
- 17 — A "derivative work" is a work based upon one or more pre-
18 existing works, such as a translation, musical arrangement,
19 dramatization, fictionalization, motion picture version, sound
20 recording, art reproduction, abridgment, or any other form
21 of adaptation by which a work may be recast or transformed.
22 A work consisting of editorial revisions, annotations, elabora-
23 tions, or similar modifications which, as a whole, represent
24 an original work of authorship, is a "derivative work."
- 25 — A "joint work" is a work prepared by two or more authors with
26 the intention that their contributions be merged into insep-
27 arable or interdependent parts of a unitary whole.
- 28 — "Literary works" are works expressed in words, numbers, or
29 other verbal or numerical symbols or indicia, regardless of the
30 nature of the material objects, such as books, periodicals,
31 manuscripts, phonorecords, or film, in which they are
32 embodied.
- 33 — "Motion pictures" are works that consist of a series of images
34 imparting an impression of motion, together with any accom-
35 panying sounds, regardless of the nature of the material
36 objects, such as films or tapes, in which they are embodied.
- 37 — "Phonorecords" are material objects in which sounds, other than
38 those accompanying a motion picture, are fixed or reproduced
39 by any method now known or later developed, and from which
40 the sounds can be perceived, reproduced, or otherwise com-

- 1 municated, either directly or with the aid of a machine or
2 device.
- 3 — “Pictorial, graphic, and sculptural works” include two-dimen-
4 sional and three-dimensional works of fine, graphic, and ap-
5 plied art, photographs, prints and art reproductions, maps,
6 globes, charts, plans, diagrams, and models.
- 7 — A “pseudonymous work” is a work on the copies or phonorecords
8 of which the author is identified under a fictitious name.
- 9 — “Publication” is the distribution of copies or phonorecords of a
10 work to the public by sale or other transfer of ownership, or
11 by rental, lease, or lending.
- 12 — “Sound recordings” are works that result from the fixation of a
13 series of musical, spoken, or other sounds, but not including
14 the sounds accompanying a motion picture, regardless of the
15 nature of the material objects, such as disks, tapes, or other
16 phonorecords, in which they are embodied.
- 17 — “State” includes the District of Columbia and any territories to
18 which this title is made applicable by an act of Congress.
- 19 — A “transfer of copyright ownership” is an assignment, exclusive
20 license, or any other conveyance or alienation by which owner-
21 ship of a copyright or of any of the exclusive rights comprised
22 in a copyright changes hands, whether or not it is limited in
23 time or place of effect, but not including a non-exclusive
24 license.
- 25 — The “United States,” when used in a geographical sense, com-
26 prises the several States, the District of Columbia, and the
27 organized territories under the jurisdiction of the United
28 States Government.
- 29 — A “work made for hire” is a work prepared by an employee
30 within the scope of his employment, or a work prepared on
31 special order or commission if the parties expressly agree in
32 writing that it shall be considered a work made for hire.

1 **TRANSITIONAL AND SUPPLEMENTARY PROVISIONS**

2 SEC. 2. This act becomes effective on January 1, 1967, except as
3 otherwise provided by section 22(b) of title 17 as amended by this
4 act.

5 SEC. 3. This act does not provide copyright protection for any work
6 that goes into the public domain before January 1, 1967. The exclu-
7 sive rights, as provided by section 5(a) of title 17 as amended by this
8 act, to reproduce a work in phonorecords and to distribute phono-
9 records of the work, do not extend to any nondramatic musical work
10 copyrighted before July 1, 1909.

11 SEC. 4. All proclamations issued by the President under section 9(b)
12 of title 17 as it existed on December 31, 1966 or under previous copy-
13 right statutes of the United States shall continue in force until termi-
14 nated, suspended, or revised by the President.

15 SEC. 5. The last sentence of section 52 of the Printing Act, approved
16 January 12, 1895 (28 Stat. 608; 44 U.S.C. 58) is hereby repealed.

17 SEC. 6. In any case where, before January 1, 1967, a person has law-
18 fully made parts of instruments serving to reproduce mechanically a
19 copyrighted work under the compulsory license provisions of section
20 1(e) of title 17 as it existed on December 31, 1966, he may continue to
21 make and distribute such parts embodying the same mechanical repro-
22 duction without obtaining a new compulsory license under the terms
23 of section 11 of title 17 as amended by this act. However, such parts
24 made after January 1, 1967 constitute phonorecords and are otherwise
25 subject to the provisions of said section 11.

26 SEC. 7. In the case of any work in which an ad interim copyright is
27 subsisting or is capable of being secured on December 31, 1966, under
28 section 22 of title 17 as it existed on that date, copyright protection is
29 hereby extended to endure for the term or terms provided by section
30 22 of title 17 as amended by this act.

31 SEC. 8. The notice provisions of sections 24 and 25 of title 17 as
32 amended by this act apply to all copies or phonorecords publicly
33 distributed on or after January 1, 1967. However, in the case of a
34 work published before January 1, 1967, compliance with the notice
35 provisions of title 17 either as it existed on December 31, 1966, or as
36 amended by this act, is adequate with respect to copies publicly dis-
37 tributed after December 31, 1966.

1 SEC. 9. The registration of claims to copyright for which the re-
2 quired deposit, application, and fee were received in the Copyright
3 Office before January 1, 1967, and the recordation of assignments of
4 copyright or other instruments received in the Copyright Office before
5 January 1, 1967, shall be made in accordance with title 17 as it existed
6 on December 31, 1966.

7 SEC. 10. All causes of action that arose under title 17 before January
8 1, 1967, shall be governed by title 17 as it existed when the cause of
9 action arose.

10 SEC. 11. If any provision of title 17, as amended by this act, is
11 declared unconstitutional, the validity of the remainder of the title
12 is not affected.

Approved For Release 2004/11/29 : CIA-RDP66B00403R000200100007-0

88TH CONGRESS
2D SESSION

S. 3008

A BILL

For the general revision of the Copyright Law,
title 17 of the United States Code, and for
other purposes.

By Mr. McCLELLAN

JULY 20, 1964

Read twice and referred to the Committee on the
Judiciary

Approved For Release 2004/11/29 : CIA-RDP66B00403R000200100007-0